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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/943,856	08/31/2001	Thomas J. Kenney	NC25872 (NOKI02-25872)	2200
30973	7590	03/30/2004	EXAMINER	
SCHEEF & STONE, L.L.P. 5956 SHERRY LANE SUITE 1400 DALLAS, TX 75225			GESESSE, TILAHUN	
			ART UNIT	PAPER NUMBER
			2684	#4
DATE MAILED: 03/30/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/943,856	KENNEY ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Tilahun B Gesesse	2684	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 August 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 16-18 is/are rejected.
- 7) ☐ Claim(s) 9-15, 19 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Objections*

1. Claim 1 is objected to because of the following informalities: in claim 1, there is typical error in line 2, in communicated. Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

2. Claim 1 recites the limitation "first selected forward -link data" in line 12. It is not clear the underline phrase, is referring to the same phrase in the preamble.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1,6-7,16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Love et al "Love" (6,058,107) in view of Cudak et al "Cudak" (6,253,063).

As to claims 1,6-7, Love discloses a two way radio communication system (figure 1), in which at least a first selected forward link data (103 or 104 of base station ) is communicated by a network station upon a forward link channel to at least a first selected mobile station ( 102), an improvement of apparatus for the first selected mobile station (102) for facilitating selection of a power level at which the first selected forward link data is communicated (column 4, lines 43-60 and figures 2-4), said apparatus comprising: a first channel condition indicia measurer(column 4, line 53-column 5, line

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9) positioned at the first selected mobile station, said first channel condition indicia measurer for measuring an indicia (measures a metric bit to indicated the forward frame frame) for communication quality levels upon the forward link channel and for forming a first channel-condition indicia value responsive thereto (column 4 line 40-column 5, line 9 and figures 2-4).

Love does not disclose a first rate selector coupled to said first channel condition indicia measurer to receive the first channel-condition indicia value, said first data rate selector for selecting a first data rate at which to communicate subsequent first selected forward-link data upon the forward link and for forming a first data rate selection value.

However, Cudak discloses a mobile station (110) selects an initial data rate for communication between base station (107) forward link (abstract and figure 2). Since, Love suggests forward link threshold value is selected to minimize, column 5, lines 27-36). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine Love and Cudak in selecting the data rate received through the forward link at the mobile terminal, as taught by Cudak, in order to measure and select the higher data rate and feedback to the base station to improve the communication.

As to claim 16-18, Love discloses a two way radio communication system (figure 1), in which at least a first selected forward link data (103 or 104 of base station) is communicated by a network station upon a forward link channel to at least a first selected mobile station (102), an improvement of apparatus for the first selected mobile

station (102) for facilitating selection of a power level at which the first selected forward link data is communicated (column 4, lines 43-60 and figures 2-4), said apparatus comprising: a first channel condition indicia measurer (column 4, line 53-column 5, line 9) positioned at the first selected mobile station, said first channel condition indicia measurer for measuring an indicia (measures a metric bit to indicated the forward frame frame) for communication quality levels upon the forward link channel and for forming a first channel-condition indicia value responsive thereto (column 4 line 40-column 5, line 9 and figures 2-4).

Love does not disclose a first rate selector coupled to said first channel condition indicia measurer to receive the first channel-condition indicia value, said first data rate selector for selecting a first data rate at which to communicate subsequent first selected forward-link data upon the forward link and for forming a first data rate selection value.

However, Cudak discloses a mobile station (110) selects an initial data rate for communication between base station (107) forward link (abstract and figure 2). Since, Love suggests forward link threshold value is selected to minimize, column 5, lines 27-36). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine Love and Cudak in selecting the data rate received through the forward link at the mobile terminal, as taught by Cudak, in order to measure and select the higher data rate and feedback to the base station for improve the communication.

5. Claims 2-3,5, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Love and Cudak in view of Fong et al "Fong" (6,493,328).

As to claims 2-3,5,8 Love and Cudak discloses every thing as explained in claim 1, except a MAC channel and 1xEV-DO packet in a TDM. However, Fong discloses plurality of base station communicating with plurality of mobile terminal forward link (D-MAC channel) in high data rate and 1xEV-DO in packet switching (column 7, lines 15-21 , column 1, lines 42-column 2, line 34 and figure 3). Since, Love, in the similar field of endeavor, teaches measuring and selecting data rate for communication, then, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine Love and Fong in sending data using a MAC channel and 1xEV-DO in a packet switching , as a power control or page to the mobile station , as taught by Fong , in order to alert the mobile station for data communication.

#### ***Allowable Subject Matter***

6. Claims 4, 9-15,19-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Tiedemann, Jr. (5,604,730) discloses the power control over a forward packet channel to a mobile radio to control a power of the mobile station (abstract and figure 4).

Ahmed et al (5,946,346) discloses power control command to control power and a channel quality is measured using transmission (abstract and figure 4).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tilahun B Gesesse whose telephone number is 703-308-5873. The examiner can normally be reached on flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay Maung can be reached on 703-308-7745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TBC

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March 25, 2004

  
TILAHUN GESESSE  
PATENT EXAMINER